

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 395

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Joseph Cervantes

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR ELECTION-DAY REGISTRATION  
AND VOTING FOR PRIMARY AND GENERAL ELECTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-1-16 NMSA 1978 (being Laws 1969,  
Chapter 240, Section 16, as amended) is amended to read:

"1-1-16. REGISTRATION OFFICER.--As used in the Election  
Code, "registration officer" means the secretary of state, a  
county clerk or a clerk's authorized deputy, a member of a  
precinct board on election day, a member of the board of  
registration or a state employee performing registration duties  
in accordance with the federal National Voter Registration Act  
of 1993 or Section 1-4-5.2 NMSA 1978."

Section 2. Section 1-4-5.1 NMSA 1978 (being Laws 1993,  
Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,  
.174800.2

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 as amended) is amended to read:

2 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

3 A. A qualified elector may apply for registration:

4 (1) by mail;

5 (2) in the office of the secretary of state or  
6 county clerk [~~or~~];

7 (3) with a registration agent or officer; or

8 (4) on election day at a polling place in the  
9 county in which the qualified elector resides.

10 B. A person may request certificate of registration  
11 forms from the secretary of state or any county clerk in  
12 person, by telephone or by mail for that person or for other  
13 persons. A qualified elector may request a certificate of  
14 registration form from a precinct board member on election day  
15 at a polling place in the county in which the qualified elector  
16 resides.

17 C. Except as provided in Subsection D of this  
18 section, a qualified elector who wishes to register to vote  
19 shall fill out completely and sign the certificate of  
20 registration. The qualified elector may seek the assistance of  
21 any person in completing the certificate of registration.

22 D. A qualified elector who has filed for an order  
23 of protection pursuant to the provisions of the Family Violence  
24 Protection Act and who presents a copy of that order from a  
25 state or tribal court to the registration officer shall not be

.174800.2

underscored material = new  
[bracketed material] = delete

1 required to provide physical residence address information on  
2 the certificate of registration.

3 E. Completed certificates of registration may be:

4 (1) mailed or presented in person by the  
5 registrant or any other person to the secretary of state; ~~[or]~~

6 (2) presented in person by the registrant or  
7 any other person to the county clerk of the county in which the  
8 registrant resides; or

9 (3) presented on election day in person by the  
10 registrant to a precinct board member at a polling place in the  
11 county in which the registrant resides.

12 F. If the registrant wishes to vote in the ~~[next]~~  
13 election, the completed and signed certificate of registration  
14 shall be delivered or mailed and postmarked at least twenty-  
15 eight days before the election or presented on election day in  
16 person by the registrant to a precinct board member at a  
17 polling place in the county in which the registrant resides.

18 G. A certificate of registration presented by a  
19 registrant to a precinct board member on election day shall be  
20 returned to the county clerk with the election returns and  
21 other materials required to be delivered to the county clerk  
22 after the closing of the polls.

23 ~~[G.]~~ H. Upon receipt of a certificate of  
24 registration, the secretary of state shall send the certificate  
25 to the county clerk in the county where the qualified elector

.174800.2

underscoring material = new  
[bracketed material] = delete

1 resides.

2 ~~[H.]~~ I. Only when the certificate of registration  
3 is properly filled out, signed by the qualified elector and  
4 accepted for filing by the county clerk as evidenced by the  
5 county clerk's signature or stamp and the date of acceptance  
6 thereon and when notice has been received by the registrant  
7 shall it constitute an official public record of the  
8 registration of the qualified elector.

9 ~~[F.]~~ J. The secretary of state shall prescribe the  
10 form of the certificate of registration, which form shall be a  
11 postpaid mail-in format and shall be printed in Spanish and  
12 English. The certificate of registration form shall be clear  
13 and understandable to the average person and shall include  
14 brief but sufficient instructions to enable the qualified  
15 elector to complete the form without assistance. The form  
16 shall also include:

17 (1) the question "Are you a citizen of the  
18 United States of America?" and boxes for the applicant to check  
19 to indicate whether the applicant is or is not a citizen;

20 (2) the question "Will you be at least  
21 eighteen years of age on or before election day?" and boxes for  
22 the applicant to check to indicate whether the applicant will  
23 be eighteen years of age or older on election day;

24 (3) the statement "If you checked 'no' in  
25 response to either of these questions, do not complete this

.174800.2

underscored material = new  
[bracketed material] = delete

1 form.";

2 (4) a statement informing the applicant that:

3 (a) if the form is submitted by mail by  
4 the applicant and the applicant is registering for the first  
5 time in New Mexico, the applicant must submit with the form a  
6 copy of: 1) a current and valid photo identification; or 2) a  
7 current utility bill, bank statement, government check,  
8 paycheck, student identification card or other government  
9 document, including identification issued by an Indian nation,  
10 tribe or pueblo, that shows the name and current address of the  
11 applicant; and

12 (b) if the applicant does not submit the  
13 required identification, the applicant will be required to do  
14 so when voting in person or absentee; and

15 (5) a statement requiring the applicant to  
16 swear or affirm that the information supplied by the applicant  
17 is true."

18 Section 3. Section 1-4-8 NMSA 1978 (being Laws 1969,  
19 Chapter 240, Section 66, as amended) is amended to read:

20 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF  
21 REGISTRATION--CLOSE OF REGISTRATION--ELECTION-DAY REGISTRATION--  
22 FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--LATE  
23 REGISTRATION.--

24 A. For qualified electors other than federal  
25 qualified electors or overseas voters, the following provisions  
.174800.2

underscored material = new  
[bracketed material] = delete

1 shall apply:

2 (1) the county clerk shall receive  
3 certificates of registration at all times during normal working  
4 hours, except that the clerk shall close registration at  
5 5:00 p.m. on the twenty-eighth day immediately preceding any  
6 election at which the registration books are to be furnished to  
7 the precinct board;

8 (2) on election day, the county clerk shall  
9 accept for filing certificates of registration for qualified  
10 electors who register to vote on election day at a polling  
11 place in the county in which the qualified elector resides;

12 [~~(2)~~] (3) registration shall be reopened on  
13 the Monday following the election;

14 [~~(3)~~] (4) for purposes of a municipal or  
15 school election, the registration period for those precincts  
16 within the municipality or school district is closed at 5:00  
17 p.m. on the twenty-eighth day immediately preceding the  
18 municipal or school election and is opened again on the Monday  
19 following the election;

20 [~~(4)~~] (5) during the period when registration  
21 is closed, the county clerk shall receive certificates of  
22 registration and other documents pertaining thereto but, except  
23 for certificates of registration received on election day,  
24 shall not file [~~the~~] any certificate of registration in the  
25 registration book until the Monday following the election, at

.174800.2

underscoring material = new  
[bracketed material] = delete

1 which time a voter information document shall be mailed to the  
2 registrant at the address shown on the certificate of  
3 registration;

4 [~~(5)~~] (6) when the twenty-eighth day prior to  
5 any election referred to in this section is a Saturday, Sunday  
6 or legal holiday, registration shall be closed at 5:00 p.m. of  
7 the next succeeding regular business day for the office of the  
8 county clerk; and

9 [~~(6)~~] (7) the county clerk shall accept for  
10 filing any certificate of registration that is subscribed and  
11 dated on or before the twenty-eighth day preceding the election  
12 and:

13 (a) received by the county clerk before  
14 5:00 p.m. on the Friday immediately following the close of  
15 registration;

16 (b) mailed and postmarked not less than  
17 twenty-eight days prior to any election referred to in this  
18 section; or

19 (c) accepted at a state agency  
20 designated pursuant to Section 1-4-5.2 NMSA 1978.

21 B. For federal qualified electors and overseas  
22 voters, the county clerk shall accept a certificate of  
23 registration by electronic transmission from a voter qualified  
24 to apply for and vote by absentee ballot in the county if the  
25 transmission is received before 5:00 p.m. on the Friday

.174800.2

underscored material = new  
[bracketed material] = delete

1 immediately preceding the election."

2 Section 4. Section 1-12-7.2 NMSA 1978 (being Laws 1969,  
3 Chapter 240, Section 114, as amended) is amended to read:

4 "1-12-7.2. ~~[VOTER]~~ QUALIFIED ELECTOR WHOSE NAME IS NOT ON  
5 LIST OR ROSTER--ELECTION-DAY REGISTRATION.--

6 A. A ~~[voter]~~ qualified elector whose name does not  
7 appear on the voter list and signature roster for the precinct  
8 in which ~~[he]~~ the qualified elector offers to vote may register  
9 to vote and shall be permitted to vote in the precinct pursuant  
10 to the federal National Voter Registration Act of 1993, this  
11 section and Section 1-12-8 NMSA 1978.

12 ~~[B. The election clerks in charge of the signature~~  
13 ~~rosters shall add the voter's name and address in ink to the~~  
14 ~~signature roster on the line immediately following the last~~  
15 ~~entered voter's name and the voter shall be allowed to sign an~~  
16 ~~affidavit of eligibility and cast a provisional paper ballot,~~  
17 ~~provided he has first signed or marked both the signature~~  
18 ~~roster and checklist of registered voters.]~~

19 B. If the qualified elector is not registered to  
20 vote and is at the polling place for the precinct in which the  
21 qualified elector resides, the qualified elector shall be  
22 allowed to complete a certificate of registration and cast a  
23 ballot; provided that:

24 (1) the qualified elector presents a current  
25 and valid photo identification card, utility bill, bank

.174800.2

underscored material = new  
[bracketed material] = delete

1 statement, government check, paycheck, student identification  
2 card or other government document, including identification  
3 issued by an Indian nation, tribe or pueblo, that shows the  
4 name and address of the applicant;

5 (2) the address in the document presented by  
6 the qualified elector is located within the precinct where the  
7 qualified elector is offering to vote; and

8 (3) the qualified elector signs or marks both  
9 the signature roster and checklist of registered voters.

10 C. If the qualified elector is not registered to  
11 vote and is at a polling place for a precinct where the  
12 qualified elector does not reside but is within the county  
13 where the qualified elector resides, the qualified elector  
14 shall be allowed to complete a certificate of registration and  
15 cast a provisional paper ballot; provided that:

16 (1) the qualified elector presents a current  
17 and valid photo identification card, utility bill, bank  
18 statement, government check, paycheck, student identification  
19 card or other government document, including identification  
20 issued by an Indian nation, tribe or pueblo, that shows the  
21 name and address of the qualified elector;

22 (2) the address in the document presented by  
23 the qualified elector is located within the county where the  
24 qualified elector is offering to vote; and

25 (3) the qualified elector signs or marks both

underscored material = new  
[bracketed material] = delete

1 the signature roster and checklist of registered voters.

2 D. Once the qualified elector is registered to  
3 vote, the election clerks in charge of the signature rosters  
4 shall add the voter's name and address in ink to the signature  
5 roster on the line immediately following the last entered  
6 voter's name.

7 [~~E.~~] E. The provisional paper ballot number for the  
8 [~~voter~~] person shall be entered on the affidavit of  
9 eligibility, the signature roster and the checklist of  
10 registered voters.

11 [~~D.~~] F. In a primary election, a voter shall not be  
12 permitted to vote for a candidate of a party different from the  
13 party designation shown on [~~his~~] the voter's certificate of  
14 registration. Upon making that determination, the county clerk  
15 shall transmit the ballot to the county canvassing board to be  
16 tallied and included in the canvass of that county for the  
17 appropriate precinct.

18 [~~E.~~] G. Verbal authorization from the county clerk  
19 to allow a person to vote is not permitted."

20 Section 5. Section 1-12-8 NMSA 1978 (being Laws 1969,  
21 Chapter 240, Section 247, as amended) is amended to read:

22 "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

23 A. A person shall be permitted to vote on a  
24 provisional paper ballot even though the person's original  
25 certificate of registration cannot be found in the county

.174800.2

underscored material = new  
[bracketed material] = delete

1 register or even if the person's name does not appear on the  
2 signature roster, provided:

3 (1) the person's residence is within the  
4 boundaries of the county in which the person offers to vote;

5 (2) the person's name is not on the list of  
6 persons submitting absentee ballots; and either

7 (3) the person executes a statement swearing  
8 or affirming to the best of the person's knowledge that the  
9 person is a qualified elector, is currently registered and  
10 eligible to vote in that county and has not cast a ballot or  
11 voted in that election; or

12 (4) the person is not registered and registers  
13 to vote in accordance with the provisions of Section 1-12-7.2  
14 NMSA 1978 on election day at a polling place for a precinct  
15 within which the person does not reside.

16 B. A voter shall vote on a provisional paper ballot  
17 if the voter:

18 (1) has not previously voted in a general  
19 election in New Mexico or has been purged from the voter list;

20 (2) registered to vote by mail;

21 (3) did not submit the physical form of the  
22 required voter identification with the certificate of  
23 registration form; and

24 (4) does not present to the election judge a  
25 physical form of the required voter identification.

.174800.2

underscored material = new  
[bracketed material] = delete

1 C. A voter shall vote on a provisional ballot in  
2 accordance with the provisions of Section 1-12-7.1 NMSA 1978 if  
3 the voter does not provide the required voter identification to  
4 the election judge.

5 D. An election judge shall have the voter sign the  
6 signature roster and issue the voter a provisional paper  
7 ballot, an outer envelope and an official inner envelope. The  
8 voter shall vote on the provisional paper ballot in secrecy  
9 and, when done, place the ballot in the official inner envelope  
10 and place the official inner envelope in the outer envelope and  
11 return it to the precinct officer. The election judge shall  
12 ensure that the required information is completed on the outer  
13 envelope, have the voter sign it in the appropriate place and  
14 place it in an envelope designated for provisional paper  
15 ballots.

16 E. Knowingly executing a false statement  
17 constitutes perjury as provided in the Criminal Code of this  
18 state, and voting on the basis of such falsely executed  
19 statement constitutes fraudulent voting."

20 Section 6. Section 1-12-8.1 NMSA 1978 (being Laws 2005,  
21 Chapter 270, Section 62, as amended) is amended to read:

22 "1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S RECEIPT OF  
23 CERTIFICATE OF REGISTRATION--PROCEDURES.--If a [~~voter whose~~]  
24 voter's name is not in the signature roster for the precinct in  
25 which the voter resides and the voter presents the voter's

.174800.2

underscored material = new  
[bracketed material] = delete

1 receipt of the voter's certificate of registration, the [~~voter~~  
2 ~~shall be allowed to vote on a provisional ballot in the proper~~  
3 ~~precinct in accordance with the provisions of Section 1-12-7.1~~  
4 ~~NMSA 1978. The~~] election judge shall inform the voter that the  
5 voter will be notified by the county clerk to provide a copy of  
6 the receipt of the certificate of registration to the county  
7 clerk if the original certificate is not located. The voter  
8 shall be allowed to register and cast a ballot as provided in  
9 the Election Code. A note shall be entered on the signature  
10 roster indicating that the voter's certificate of registration  
11 should be checked by the county clerk. For the purposes of  
12 investigation or prosecution, the county clerk shall provide  
13 the district attorney and the secretary of state with the  
14 person's name and address and the corresponding receipt number  
15 of the person's certificate of registration for each person  
16 whose certificate of registration is not located."

17 Section 7. Section 1-12-20 NMSA 1978 (being Laws 1969,  
18 Chapter 240, Section 273, as amended) is amended to read:

19 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A  
20 challenge may be interposed by a member of the precinct board  
21 or by a party challenger for the following reasons:

22 A. the person [~~presenting himself~~] who has come to  
23 vote is not registered and is not a qualified elector;

24 B. the person [~~presenting himself~~] who has come to  
25 vote is listed on the purge list placed with the signature

.174800.2

underscored material = new  
[bracketed material] = delete

1 rosters or is listed among those persons in the precinct from  
2 whom an absentee ballot was received;

3 C. the person [~~presenting himself~~] who has come to  
4 vote is improperly registered because [~~he~~] the person is not a  
5 qualified elector;

6 D. in the case of a primary election, the person  
7 [~~presenting himself~~] who has come to vote is not affiliated  
8 with a political party represented on the ballot; or

9 E. in the case of an absentee ballot, the official  
10 outer envelope of the absentee voter has been opened prior to  
11 the counting of the ballots."

12 Section 8. Section 1-12-25.4 NMSA 1978 (being Laws 2003,  
13 Chapter 356, Section 7, as amended) is amended to read:

14 "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

15 A. Upon closing of the polls, provisional paper  
16 ballots shall be delivered to the county clerk, who shall  
17 determine if the ballots will be counted prior to certification  
18 of the election.

19 B. A provisional paper ballot shall not be counted  
20 if the registered voter did not sign either the signature  
21 roster or the ballot's envelope.

22 [~~C. If there is no record of the voter ever having~~  
23 ~~been registered in the county, the voter shall be offered the~~  
24 ~~opportunity to register and the provisional paper ballot shall~~  
25 ~~not be counted.~~

.174800.2

underscored material = new  
[bracketed material] = delete

1           ~~D.~~ C. If the voter was registered in the county,  
2 the registration was later canceled and the county clerk  
3 determines that the cancellation was in error, the voter's  
4 registration shall be immediately restored and the provisional  
5 paper ballot counted.

6           ~~E.~~ D. If the county clerk determines that the  
7 cancellation was not in error, the voter shall be offered the  
8 opportunity to register at the voter's correct address, and the  
9 provisional paper ballot shall not be counted.

10          ~~F.~~ E. If the voter is a registered voter in the  
11 county, but has voted on a provisional paper ballot at a  
12 polling place other than the voter's designated polling place,  
13 the county canvassing board shall ensure that only those votes  
14 for the positions or measures for which the voter was eligible  
15 to vote are counted.

16          ~~G.~~ F. If the county clerk finds that the voter  
17 who voted on a provisional paper ballot at the polls has also  
18 voted an absentee ballot in that election, the provisional  
19 paper ballot shall not be counted.

20          ~~H.~~ G. The county canvassing board shall prepare a  
21 tally displaying the number of provisional paper ballots  
22 received, the number found valid and counted, the number  
23 rejected and not counted and the reason for not counting the  
24 ballots as part of the canvassing process and forward it to the  
25 secretary of state immediately upon certification of the

.174800.2

